No. 80-1552

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In the Supreme Court of the United States

OCTOBER TERM, 1980

JOSLYN N. WILLIAMS, PETITIONER

v.

DANIEL J. BOORSTIN,
LIBRARIAN OF THE LIBRARY OF CONGRESS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that petitioner, who had repeatedly misrepresented his academic training and job qualifications, had failed to establish a prima facie case of discrimination based on the decision of the Library of Congress to fire him, because he had failed to show that he was qualified for the job that he held.

2. Whether the court of appeals erred in holding that petitioner had failed to show that the Library's stated reason for firing him (that he had obtained his initial job and subsequent promotions by misrepresenting his qualifications) "was in fact pretext" because the record showed that he was treated in the same way as other employees who had acted in the same way.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-52a) is not yet reported. The opinion of the district court (Pet. App. 1b-40b) is reported at 451 F. Supp. 1117.

JURISDICTION

The judgment of the court of appeals was entered on October 3, 1980. A petition for rehearing and suggestion for rehearing en banc was denied (Pet. App. 1c-3c) on December 9, 1980. The petition for a writ of certiorari was filed on March 9, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Joslyn N. Williams, "a man who engaged in an elaborate masquerade as a purported law student, applicant for the bar, then lawyer in order to obtain and keep a job whose specific required qualifications called for a lawyer" (Pet. App. 2a), seeks review of the decision of the court of appeals, which rejected his contention that he had been discharged by the Library of Congress because of unlawful retaliation in violation of Section 704 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-3, and held that he had been discharged because of his lack of qualifications and repeated misrepresentations concerning his qualifications.

1. In January 1967, petitioner applied for a part-time job as an assistant in the law library of the Library of Congress. Petitioner stated in his application that he had attended Howard University from 1956 to 1962, that he had completed four years as a day student and two years as a night student, and that he had completed a total of 142 credit hours. He also represented that he had completed two years of legal study (from 1964 to 1966) in the Faculty of Law of Dalhousie University in Canada, and that he had attended "Georgetown" from 1966 until the date of his application (C.A. App. 132-135). As was later discovered (see pages 3-4, *infra*), these representations, which petitioner certified as true,[1] were substantially and materially false (Pet. App. 8a-11a).

Petitioner was hired for this job and subsequently promoted "because among all the applicants he appeared to be relatively better qualified on the scale of legal education"

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[1] Petitioner certified the truth of these statements in his written application under a bold type warning which stated that " '[a] false or dishonest answer to any question in this application may be grounds for rating you ineligible for Federal employment, or for dismissing you after appointment, and may be punishable by fine or imprisonment (U.S. Code, Title 18, Sec. 1001).' " Pet. App. 9a.

(Pet. App. 14a). Indeed, when petitioner was selected for his initial position, the Recommending Officer explained that "Mr. Williams, by reason of his completion of two years of law school, is better qualified to perform the duties of the position than the remaining candidates" (C.A. App. 138). A few months later, petitioner was likewise selected for a full-time job in the Copyright Office of the Library, (a position that required a law degree) because the Recommending Officers were impressed with him and his educational background (Pet. App. 14a-15a). One of the Recommending Officers subsequently confirmed that " '[i]t was principally because of his alleged past and continuing law school experience that we decided to recommend Mr. Williams' appointment as a Copyright Examiner' " (*id.* at 15a). As the court of appeals explained, petitioner "perpetuated his ruse by 'acting like a lawyer'—in the words of the district court, '[leading] his friends and his critics to believe him to be a trained and effective lawyer'—and requesting leave in 1970 and again in 1971 supposedly to study and sit for the Maryland bar examination" (*id.* at 15a-16a). During the course of his employment, petitioner was a leader in employee efforts to combat alleged prejudice at the Library (*id.* at 17a-19a).

Petitioner's misrepresentations concerning his educational background were eventually discovered, as the court of appeals noted (Pet. App. 16a-17a):

> [I]t was discovered eventually that Williams as a lawyer was a fake. In a Library training session on copyright law, Williams apparently did not quite "think like a lawyer," thereby arousing the suspicion of the instructor. This suspicion prompted an investigation. The complete record of continuous deceit was then revealed, and, after a period of stubborn false denials, subsequently conceded by Williams.

In fact, petitioner had completed only one year of legal study in Canada and had actually been dismissed from Dalhousie because of academic failure (Pet. App. 10a). He had never enrolled in, audited, or regularly attended classes at the Georgetown University Law Center (*id.* at 10a-11a). He had also misrepresented his college studies by exaggerating the number of credit hours that he had successfully completed (*id.* at 11a). As the court of appeals noted (*ibid.*), "he did actually receive a Bachelor of Arts degree from Howard, but this alone would not have entitled him to any consideration whatsoever for the position for which he applied in 1967, and [petitioner] knew this."

2. The district court found that petitioner had obtained his initial employment and subsequent promotions at the Library by falsely stating that he was a law student and then a lawyer. The court said that "[n]o court should take such calculated falsehoods lightly" (Pet. App. 35b-36b). The court found that petitioner had failed to establish a prima facie case of racial discrimination, and that he was not a victim of racial discrimination (*id.* at 20b, 24b-25b, 27b-28b). However, the court found unlawful retaliation, based on its view that the Library officials "could not have failed to, and did in fact, react individually and as a group, with considerable intensity, to the threat and provocation inherent in Williams' efforts with respect to Library employment practices" (*id.* at 21b). In the district court's view, "[i]t would have required saintly discipline for these particular Library managers not to be influenced in deciding to terminate [petitioner] by hostility against his efforts to expose discrimination at the Library" (*ibid.*).

In light of the circumstances, however, the district court declined to grant any relief to petitioner. Instead, the court ordered the Library "to establish and contribute financially to the maintenance of a service for the benefit of Library employees with *bona fide* discrimination grievances which

will enable them to employ legal counsel or lay spokesmen of their choice to counsel such employees and to represent them in administrative proceedings with respect to those grievances" (Pet. App. 39b).[2]

3. The court of appeals reversed, holding that the standard articulated in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), "is utterly inconsistent with a finding of discrimination in this case" (Pet. App. 3a-4a). The court emphasized "the depth and persistence of Mr. Williams' lies and their material relation to his original job and later promotions" (*id.* at 7a-8a), and concluded that "[a]n egregious record like this one hardly poses the ideal case for a whisper of a racial discrimination complaint, let alone an employment discrimination lawsuit" (*id.* at 17a).

After thoroughly discussing (Pet. App. 29a-37a) the standard articulated by this Court in *McDonnell Douglas Corp.* v. *Green, supra*, the court of appeals held (Pet. App. 38a-39a) that petitioner had failed to establish a prima facie case of employment discrimination because he had not shown that he was qualified for the job that he lost when his fraud was discovered. Petitioner was not qualified because he was not a lawyer (*id.* at 38a-39a). Moreover, his fraud clearly showed that he lacked the necessary trustworthiness, reliability, veracity and good judgment required of copyright examiners (*ibid.*). The court also noted that even if petitioner's evidence were sufficient to establish a prima facie case, it was clear that the Library had articulated a legitimate nondiscriminatory reason for firing him, and that he had not shown that that reason was a pretext for discrimination. As the court explained, the Library would have fired petitioner absent any retaliatory motive because his knowing and willful lies were a criminal offense, and the

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[2]Congress subsequently prohibited the Library from funding this plan. Act of Sept. 30, 1978, Pub. L. No. 95-391, Section 308, 92 Stat. 789; H.R.J. Res. 412, 95th Cong., 2d Sess. (1979).

propriety of this sanction for such conduct was well established both at the Library and in other agencies (Pet. App. 41a-44a).

ARGUMENT

The decision of the court of appeals in this extraordinary case is manifestly correct. But for petitioner's repeated material misrepresentations concerning his job qualifications, he would never have been considered for employment at the Library. That petitioner was fired when his lies were discovered hardly suggests discrimination. Further review is unwarranted.

1. The decision of the court of appeals is bottomed on petitioner's lack of qualifications for a job that he acquired by fraud. There is no merit to petitioner's contention (Pet. 28-33) that the court erred in requiring him to show that he possessed the minimum qualifications for this job. Although petitioner claims that his admitted lack of qualifications is irrelevant, it is well settled that "Congress did not intend by Title VII * * * to guarantee a job to every person regardless of qualifications." *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 430 (1971). Thus, "the alleged discriminatee [must] demonstrate at least that his rejection did not result from the two most common legitimate reasons on which an employer might rely to reject a job applicant: an absolute or relative lack of qualifications or the absence of a vacancy in the job sought." *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 358 n.44 (1977). Where, as here, a person never would have been considered for employment but for misrepresentations with respect to his qualifications, it is hardly unreasonable to require that he demonstrate his job qualifications as part of his prima facie case.[3] In short, the court below correctly held that

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[3]As the Court recently noted in *Texas Department of Community Affairs* v. *Burdine*, No. 79-1764 (Mar. 4, 1981), slip op. 5, "[t]he prima facie case serves an important function in the litigation: it eliminates the

petitioner had not established a prima facie case of discrimination because he had not established that he held the requisite qualifications. The court of appeals aptly explained this requirement (Pet. App. 32a-33a; footnote omitted):

> Title VII imports no suggestion that the less qualified shall be favored over the more qualified simply by virtue of their connection with some protected antidiscrimination activity. No good reason exists for allowing a non-qualified employee to invoke Title VII to cure deficiencies in his or her qualifications, or to immunize potentially serious defects in the worker's job profile. It would be incongruous—and certainly not required by law—to give any employee, even one engaged in exemplary efforts to vindicate the law of the land, a stranglehold on a job irrespective of that employee's material, work-related flaws.

2. Because petitioner failed to establish that he possessed the requisite qualifications for the job that he held (and from which he was fired because of his misrepresentations concerning his qualifications) and thus failed to establish a prima facie case of discrimination, there is no reason for this Court to grant review here, as petitioner suggests (Pet. 20-28), to resolve an alleged conflict among the circuits as to whether a Title VII plaintiff must prove, as part of his "pretext" showing, that he would not have been discharged "but for" his having engaged in protected activity. Even if petitioner had established a prima facie case, however, it would be abundantly clear that the Library discharged its burden to articulate lawful reasons for its action (see *Texas Department of Community Affairs* v. *Burdine*, *supra*, slip

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most common nondiscriminatory reasons for the plaintiff's rejection." The evidence necessary to establish a prima facie case depends, of course, on the particular context in which the discrimination is alleged to have occurred. See *International Brotherhood of Teamsters* v. *United States*, *supra*, 431 U.S. at 357-358.

op. 6-7), and that petitioner failed to show that the Library's explanation was a pretext for discrimination.

Petitioner's lies were knowing, willful and criminal; the disciplinary action that he received was both appropriate and consistent with regular practice (Pet. App. 42a-44a). The court of appeals correctly held that petitioner's conduct would have warranted termination of his employment in any event, and the court's application of the standard articulated in this Court's decision in *Mt. Healthy City Board of Education* v. *Doyle*, 429 U.S. 274 (1977), was clearly correct. See also *Robison* v. *Wichita Falls & North Texas Community Action Corp.*, 507 F. 2d 245, 256 (5th Cir. 1975) (Wisdom, J.) ("Just as the First Amendment cannot limit the public's power to dismiss the inept, it also cannot limit the public's power to dismiss the corrupt"). Finally, petitioner's contention (Pet. 20-28) that the *Mt. Healthy* test (which was developed in the First Amendment context) affords insufficient protection to the rights created by Title VII, is insubstantial.[4] The court below properly noted (Pet. App. 36a-37a; footnote omitted):

> This standard is plainly correct, as it not at all precludes a finding of Title VII violation when an employer acts for mixed motives. The mere presence of a legitimate purpose underlying the discharge will not sterilize unlawful retaliation, where the latter is in fact the dispositive cause. The *but for* standard simply

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[4]Petitioner's reliance (Pet. 26-28) on retaliation cases under the National Labor Relations Act is misplaced. As the First Circuit has recently noted, the National Labor Relations Board now applies the *Mt. Healthy* test in such cases. See *Statler Industries, Inc.* v. *NLRB*, No. 80-1455 (1st Cir. Mar. 12, 1981), slip op. 4-5. Moreover, the courts of appeals have been divided, at best, as to whether a "but for" test should be applied in such cases. See, *e.g.*, *Western Exterminator Co.* v. *NLRB*, 565 F. 2d 1114, 1118 & n.3 (9th Cir. 1977).

compares the adversity faced by the plaintiff employee (who had engaged in conduct protected by Title VII) with conditions imposed on similarly situated employees who did not engage in protected conduct.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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